

FILED
Clerk
District Court

OCT - 6 2006

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

JOHN (JACK) ANGELLO,

Plaintiff

v.

NORTHERN MARIANAS
COLLEGE,

Defendant

Civil Action No. 03-0014

FINDINGS OF FACT AND
CONCLUSIONS OF LAW AFTER
GRANT OF FED.R.CIV.P. 52(c)
MOTION BY DEFENDANT

THIS MATTER came before the court on October 2-3, 2006, for a bench trial on the remaining two Title VII claims for relief in plaintiff's third amended complaint: gender discrimination and retaliation. Plaintiff appeared personally and by and through his attorney, Danilo Aguilar; defendant appeared by and through its attorney, F. Matthew Smith.

1 At the conclusion of plaintiff's case in chief, defendant moved for judgment
2 on partial findings, pursuant to Fed.R.Civ.P. 52(c).¹ The court granted the motion
3 and indicated that these findings of fact and conclusions of law would follow.
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5 This lawsuit proceeded to trial before the court on plaintiff's two remaining
6 post-pretrial motions claims for relief: gender discrimination and retaliation under
7 Title VII, 42 U.S.C. § 2000e. The gist of both claims for relief was that Barbara
8 Moir who, during the relevant time periods, held various positions equal to or above
9 plaintiff at Northern Marianas College (NMC). Plaintiff alleges that she
10 discriminated against him because he is a male and retaliated against him for filing
11 complaints against her with the College itself and the U.S. Equal Employment
12 Opportunities Commission (EEOC). Plaintiff testified, as did Leonard "Butch"
13 Wolfe, Jr., and Lino Santos (whose deposition testimony was read into the record).
14 Plaintiff also entered into evidence numerous documents. Defendant also
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20 Rule 52(c) provides in full:

21 Judgment on Partial Findings. If during a trial without a jury a party
22 has been fully heard on an issue and the court finds against the party
23 on that issue, the court may enter judgment as a matter of law against
24 that party with respect to a claim or defense that cannot under
25 controlling law be maintained or defeated without a favorable ruling on
26 that issue, or the court may decline to render any judgment until the
findings of fact and conclusions of law as required by subdivision (a)
of this rule.

1 introduced several documents.

2 3 4 Findings of Fact

5 Plaintiff began his employment with defendant Northern Marianas College in
6 June, 1996. He was originally hired as the Director of Apprentice Trades, but his
7 program was later called Vocational Trades, a part of the Continuing Education
8 program at NMC. His program was later placed in the department of Arts and
9 Sciences, which was then overseen by Dr. Barbara Moir.

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11 On October 28, 1998, plaintiff filed a "gender-based" EEO complaint with
12 NMC Director of Human Resources, against Barbara Moir, who was then Vice
13 President of Instruction. Plaintiff complained of her "past and present pattern of
14 harassment of male employees at NMC" and her "direct harassment of me in my
15 work here at NMC." Plaintiff concluded that he would wait for the next step in the
16 process, which he assumed was an "intake meeting," at which time he would
17 "provide evidence and make my complete statement for your records." Plaintiff's
18 Ex. 4.

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20 On March 9, 1999, plaintiff filed a "notification of grievances" with the
21 president of the college (then Agnes McPhetres), "officially requesting an
22 inquiry...into several incidents involving [Moir] and myself, which have been very
23 disturbing, demoralizing and, possibly, contrary to BOR [Board of Regents] policy
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1 and employee contractual rights and obligations. I regret the incidents have risen to
2 a height of professional and personal intolerability, and remedial intervention is now
3 necessary.” Plaintiff then lists a number of items that he feels support his claim.
4 None of the items complained of involves plaintiff’s sex and most of them occurred
5 *before* plaintiff’s first EEO complaint against Moir. Plaintiff closed that he would
6 “support the above allegations with testimony and additional proof, when
7 necessary.” Plaintiff’s Ex. 9.

10 In a March 26, 1999, memo to the NMC Human Resources Director, plaintiff
11 complains, as one of twelve “unresolved” grievances, that Moir has a bias against
12 men and local participants in programs. Because the matters remain “unresolved”
13 despite meetings with Moir and his immediate supervisor, and even though they had
14 been presented to the College President and discussed by her appointed mediator,
15 plaintiff wishes the matters reviewed by the Employee Appeals Committee.
16 Plaintiff’s Ex. 11.

19 On November 12, 1999, plaintiff agreed by his signature to a
20 “Recommendation for Settlement - Grievance for Dr. Jack Angello,” prepared by
21 Kohne Ramon as Director of Human Resources Office and sent to NMC President
22 Agnes McPhetres. Plaintiff agreed in the agreement that it would settle all pending
23 matters, and he received a pay “one step increase for the new position of Director
24 of Technical Trades/Special Projects,” compensation for a portion of a class he
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1 ceased teaching due to health problems, and “training on sexual harassment for
2 both male and female employees of the College,” for which the Director of the
3 Human Resources Office indicated a desire to see “immediate action on the latter
4 concern.” The settlement agreement recognized plaintiff’s concern that none of his
5 prior actions be “used in any way to retaliate against him.” Plaintiff’s Ex. 14.
6
7 Neither Dr. Moir nor any discrimination on the basis of sex directed to plaintiff
8 individually were mentioned in the settlement memo.
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10 On December 13, 1999, plaintiff sent a memo to NMC’s Director of Human
11 Resources noting the “amicable resolution” of his personnel grievance against NMC
12 (not Moir). Plaintiff’s Ex. 15.
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14 On December 7, 1999, plaintiff sent a letter to an EEOC Investigator in
15 Honolulu, Hawaii, noting the amicable resolution of his grievances and asking that
16 his EEOC complaint be withdrawn. In the letter, plaintiff expresses his concern
17 that the sexual harassment training has not yet been conducted and expresses his
18 concern that retaliation might already have begun, since an evaluation that was
19 supposed to have occurred some months prior had not yet been scheduled and that
20 “some NMC administrators here at the college tried to adversely affect the attached
21 agreement, and this rancor will surely carry over to next year.” Plaintiff’s Ex. 16.
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24 On March 2, 2000, plaintiff signed another two-year contract with NMC.
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26 The contract provided that it could be terminated without cause upon sixty days’

1 written notice. Defendant's Ex. A, ¶ VII(C).

2 On March 9, 2001, plaintiff filed another grievance against Moir, accusing her
3 of harming plaintiff's personal and professional life and wanting to know why "a
4 beneficial program [the Pacific Rim Academy, *see infra*] has been virtually beaten to
5 death through the use of destructive rumors, a lack of middle-management support,
6 and the apparent mean-spirited acts of academic sabotage." Plaintiff's Ex. 41. The
7 acts of sabotage and lack of support were Moir's "intentional" omission of
8 Audio/Visual classes for the Fall 2000 class schedule, her failure to attend a
9 luncheon meeting set up by plaintiff and others, and Moir's "unilateral" decision to
10 again omit the A/V classes, this time from the Spring 2001 class schedule. Plaintiff
11 then acknowledges that the classes must be approved by the Academic Council
12 before they can be included, but notes that the Academic Council "is chaired by
13 [Moir's] sister." Plaintiff then mischaracterizes the earlier settlement by saying that
14 it required "that B. Moir receive sexual harassment training...and I don't believe Ms.
15 Moir has received her sexual harassment (against male workers) training." In the
16 "Actions Requested" portion of the memo, plaintiff asks that the NMC President
17 "re-visit the previous EEOC agreement and satisfy the stipulations, including a filing
18 of a new EEO violation against Ms. Moir (repeat offender)." He also asks that no
19 one "retaliate against J. Angello" and that NMC "reach a fair settlement with him."
20 Plaintiff's Ex. 41.

1 On June 20, 2001, plaintiff sent a memo to the president of NMC, stating
2 that as per Board of Regents policy, his grievance was to be administered "in a
3 satisfactory and timely manner," which had not yet occurred, and asks to be advised
4 of the President's intentions. Plaintiff's Ex. 58.

6 In an e-mail reply of July 2, 2001, Kohne Ramon stated that the President
7 wished to meet with the parties, that Moir was then off-island but expected to
8 return in two weeks, and asked plaintiff to provide documentation to support his
9 claims of personal and professional harm. Plaintiff's Ex. 59.

12 On September 24, 2002, plaintiff and ten other NMC employees were
13 terminated by the newly-installed NMC President, Kenneth E. Wright, as part of a
14 major reorganization of the College. Plaintiff's Ex. 85. Wright noted that although
15 he had not yet had time to assess plaintiff's work, "your peers and colleagues have
16 had nothing but appreciation for your work at Northern Marianas College." In
17 accordance with his contract, plaintiff was paid for the following sixty days,
18 although his termination was to take effect immediately.

21 Plaintiff's Exhibit 100 is a copy of the decision of the NMC Employee
22 Appeals Committee. None of the items originally asked by plaintiff to be
23 considered by the Committee named Dr. Moir. The Committee's decision noted
24 that at the first hearing, on August 27, 2002, President Wright had "suggested he be
25 given time to meet with Dr. Angello to see if a resolution of his concerns could be
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1 arrived at without going through the Appeals Committee. Dr. Angello agreed.”
2 The meeting between Wright and plaintiff was deemed unsuccessful, so the hearing
3 was re-scheduled to November 26, 2002.
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5 At the November 26, 2002, hearing , plaintiff presented a letter listing all the
6 things he wanted addressed by the Committee, which included several new areas of
7 grievance. Ultimately, the Appeals Committee concluded that it lacked jurisdiction
8 to consider plaintiff's complaints, since he was no longer an employee. *Id.*
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10 11 12 Conclusions of Law

13 Plaintiff may establish a prima facie claim of sex discrimination under Title
14 VII, 42 U.S.C. § 2000e-2(a)(1), by either direct or indirect (circumstantial) evidence.
15 Mondero v. Salt River Project, 400 F.3d 1207 (9th Cir. 2005), relying in part on
16 McDonnell Douglas Corp. v. Green, 93 S.Ct. 1817 (1973).
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18 Plaintiff can show by direct evidence that an employer (here, Moir as an
19 employee of defendant College) discriminated against him because of his gender.
20 Plaintiff presented no direct evidence that Moir discriminated against him
21 personally, either because he is a male or for any other reason.
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23 Plaintiff can also present indirect (circumstantial) evidence that (1) he was a
24 member of a protected class, (2) that he applied for and was qualified for a position
25 he sought, (3) despite being qualified, he was rejected, and (4) that after he was
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1 rejected the position remained open and the employer continued to seek other
2 applications from people with similar qualifications.

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4 For a disparate treatment claim to be a claim of discrimination on the basis of
5 sex, the claimant's sex must have "actually played a role in [the decisionmaking]
6 process and had a determinative influence on the outcome." Hazen Paper Co. v.
7 Biggins, 113 S.Ct. 1701 (1977), cited in Jackson v. Birmingham Bd. of Education,
8 125 S.Ct. 1497 (2005) (dissent). As stated in the statute itself: "[A]n unlawful
9 employment practice is established when the complaining party demonstrates
10 that...sex...was a motivating factor for any employment practice, even though other
11 factors also motivated the practice." 42 U.S.C. § 2000e-2(m).

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14 To establish a *prima facie* claim for retaliation under Title VII, 42 U.S.C. §
15 2000e-3(a), plaintiff must show, by a preponderance of the evidence:
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- 17 1. That he engaged in a protected activity;
- 18 2. That defendant took an adverse employment action against him; and,
- 19 3. That there is a causal link between plaintiff's protected activity and the
20 adverse action.
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22 When adverse employment decisions closely follow complaints of
23 discrimination, retaliatory intent may be inferred.
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25 Plaintiff offered no direct or circumstantial evidence to support either of his
26 claims. When asked for specific examples of sex discrimination or retaliation, he

1 could offer none. Rather, his testimony was that he “got a general feeling of
2 animosity from” Moir and discerned “tenseness” after he had filed his first EEOC
3 complaint in the Fall of 1998. He also felt that her “body movements” showed she
4 took pleasure in causing the Vocational Trades department (presumably as plaintiff’s
5 alter ego) to suffer. Plaintiff “came to believe” that questions about his post-
6 secondary teaching experience totals were the responsibility of Moir. When factual
7 discrepancies in his various applications regarding his post-secondary teaching
8 experience were pointed out to him during trial, plaintiff attributed all of them to
9 the “severe stress” he was under when he filled them out. Also, even though he had
10 been told by Jack Sablan that there was no funding for the Pacific Rim Academy
11 that he wished to commence, plaintiff “felt there was some other reason classes
12 were stopped.” At every turn, plaintiff perceived setbacks to his programs as
13 attributable exclusively to Dr. Moir’s influence or behind-the-scenes machinations,
14 although he acknowledged that during most of the relevant time she had no direct
15 supervisory control over him or his program. There was no evidence that, when she
16 was briefly the interim president of the College, she took any action directly against
17 him or his program in retaliation for his EEO complaints against her. Further,
18 despite acknowledging that his tendency to document everything might sometimes
19 be a burden to others, plaintiff was unable to document facts about his own
20 teaching experience and blamed “stress” for contradictory claims. After plaintiff
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1 acknowledged that he was interviewed for positions at NMC after he had been
2 terminated, he said the interviews were only conducted so NMC could "cover
3 themselves." When plaintiff asked why Moir's name rarely appears in any of his
4 early grievances or the settlements, he says that "everybody knew" that she was who
5 they were talking about. Finally, plaintiff admitted that Moir never gave him a bad
6 evaluation, or demoted him, or instituted any disciplinary action against him, which
7 he attributed to her not having any reason for doing so. Plaintiff presented no
8 evidence that Moir subjected him to, or was in a position to subject him to, gender
9 discrimination, disparate treatment in the workplace, or a hostile work environment.
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13 Witness Wolfe could offer no direct evidence of gender discrimination
14 against plaintiff by Moir. He observed "just tension" between the two of them, and
15 felt that she did not want to deal with either of them and just wanted to "push her
16 weight around." He testified that he met with Jack Sablan "plenty of times" about
17 the Pacific Rim Academy program (PRA)² but was always told by Sablan that there
18 was no funding for, or interest in, PRA. Wolfe testified that after two years of
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23 Witness Wolfe is a noted sound effects editor, having won many awards in
24 his field of expertise. He and plaintiff had met, discovered that they grew up close
25 to each other, and, as their friendship grew, began discussing Wolfe's concern that
26 sound effects work was being outsourced by Hollywood to Asian countries, and that
perhaps a local program could be started to teach young people the skills and
technology, perhaps leading to the Commonwealth becoming a site for future work.

1 unkept promises from every quarter, he abandoned the project with NMC.

2 Lino Santos' deposition testimony revealed that he felt the main problem was
3 that there was no support for the vocational trades program from those in positions
4 of responsibility at NMC. He could not recall Moir ever saying anything bad to
5 plaintiff or doing anything bad to him. He testified that he "sort of felt" she did not
6 like the program, even though she said she did. He testified that plaintiff told him
7 he might leave the program, although he did not say why, and Santos did not want
8 to lose him because he felt plaintiff had always been helpful to him and the
9 program. He testified he felt Moir continually showed a negative attitude against the
10 vocational trades program, but not against plaintiff, and that he never saw or heard
11 anything suggesting Moir did not like plaintiff.
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13 In conclusion, after two days of trial, the court was left with the indelible
14 impression that plaintiff's perception of events found no support in the admissible
15 evidence. A review of all the testimony and documents demonstrates that, when
16 finally given the opportunity to prove his allegations, he could not make out a *prima*
17 *facie* case. Accordingly, defendant's motion for judgment on partial findings was
18 granted.
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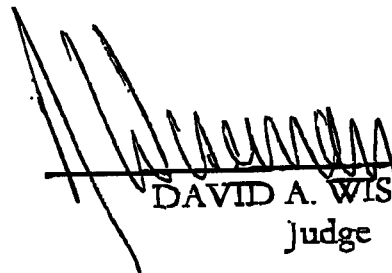
20 The court did not, and need not, address plaintiff's contention that he was
21 entitled to Commonwealth civil service protections, despite the express language of
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his contract that he could be terminated without cause.

Costs are awarded to defendant, pursuant to 28 U.S.C. § 1920.

DATED this 6th day of October, 2006.



DAVID A. WISEMAN
Judge